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Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel
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By EMAIL

Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dear Commissioner,

**ADRP Review No. 143 – Precision Pipe and Tube Steel exported from the People’s
Republic of China and the Socialist Republic of Vietnam**

The Anti-Dumping Review Panel (Review Panel) is currently conducting a review of the decision of the then Acting Minister for Industry, Science And Technology (Minister) made under section 269TJ(1) and (2) of the *Customs Act 1901* (the Act) in respect of Precision Pipe and Tube Steel exported from the People’s Republic of China and the Socialist Republic of Vietnam (the GUC).

The Review Panel accepted an application for review from Orrcon Manufacturing Pty Ltd (Orrcon).

Orrcon’s application to the Review Panel relies upon the following ground of review:

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The decision by the Minister to accept the Commissioner's recommendation that the determination of a Chinese exporter countervailable subsidy under Program 20, Hot rolled steel provided by government at less than fair market value ("Program 20") using the Chinese domestic steel market as the prevailing market benchmark, was not the correct or preferable decision. The Minister did not have sufficient regard to the prevailing market conditions for Hot Rolled Coil ("HRC") steel in China. Additionally, the minister did not consider that the extent and degree of the Government of China's influence in the Chinese HRC market significantly distorted all Chinese HRC prices, not just the prices of HRC supplied by State Invested/State Owned Enterprises.

As you are aware, I am conducting the review.

Pursuant to section 269ZZL of the Act, I require the following findings in Report 550, relating to Orrcon's ground of review, be reinvestigated:

1. That there is insufficient evidence that Program 20 conferred a countervailable benefit.

If you have any issues in relation to the reinvestigation or if you consider that a conference under s 269ZZHA of the Act would assist in obtaining the further information the subject of the reinvestigation, please contact the Secretariat.

I provide below a summary of my reasons for making the request under s 269ZZL of the Act:

Background

1. On 16 March 2020, Orrcon lodged an application alleging, inter-alia, that the Australian industry for like goods had suffered material injury caused by exports of the GUC to Australia from China at dumped and subsidised prices. The application alleged the existence of 45 of what were described as "Programs", provided by the Government of China (GOC), which were said to subsidise exports of the GUC to Australia. Orrcon described one such Program as "*Program 20 - Hot rolled steel provided by government at less than fair market value*" which was said to affect the cost of hot rolled coil (HRC), a major raw material input consumed in the production of the GUC. The application alleged in previous inquiries, that because the Commission had accepted the nominated Programs conferred countervailable subsidies, the GUC would be in receipt of the same benefits.

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2. On 31 March 2020, the Commissioner accepted the application and initiated Investigation 550 into the allegations of dumping and subsidisation. An investigation period of 1 January 2019 to 31 December 2019 (investigation period) was nominated to assess dumping and subsidisation.
3. Dalian Steelforce Hi-Tech Co., Ltd (Dalian) is a Chinese manufacturer and a major exporter of the GUC to Australia. Anti-Dumping Commission Report 550 (REP 550) describes Dalian as “an export oriented producer that does not manufacture goods for the domestic Chinese market.”¹ The Commission forwarded Dalian an Exporter Questionnaire which sought the provision of detailed financial and sales data for the investigation period relating to both the allegations of dumping and subsidisation. Dalian provided a detailed response to this questionnaire and the Commission conducted what it described as “a remote verification” of the company’s response. The Commission was satisfied that the information provided by Dalian was accurate and reliable. Dalian was therefore accepted by the Commission as being a “cooperative exporter”.
4. The Commission invited the GOC for consultations concerning the claims made by Orrcon in relation to countervailable subsidies. The Commission also provided the GOC with a questionnaire which included questions relating to the alleged subsidy Programs identified in Orrcon’s application. The GOC did not respond to this questionnaire.
5. REP 550 notes,

“the GOC did provide a questionnaire response to the Commission in respect of a separate investigation, *Investigation 553 - Painted Steel Strapping* initiated shortly after this investigation. It was alleged in the *Investigation 553* that Chinese exporters of painted steel strapping, also manufactured from HRC, were in receipt of the same countervailable subsidies as alleged were received by Chinese exporters of [the GUC]. Due to the similarities in the subsidy allegations and the raw material inputs in the 2 cases, the Commission has had regard to the response by the GOC to *Investigation 553* in its consideration of this investigation.”²

¹ REP 550 at page 54.

² REP 550 at page 82.

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6. On 1 June 2021, the Commission published a Statement of Essential Facts (SEF), 550, which found that Chinese manufactures of the GUC had received countervailable subsidies under a number of the Programs identified by Orrcon in its application, including under Program 20. On that basis, the SEF foreshadowed the imposition of a countervailing duty on Dalian and all other Chinese exporters of the GUC.
7. REP 550 referred to consideration of submissions from Dalian dated 26 June 2021, the submission from the GOC provided in relation to *Investigation 553* and to the Commission's analysis of a comparison between purchases of HRC in China from what it referred to as "private companies" and from State owned enterprises (SOE). REP 550 then "determined that [Program 20] provided no benefit to Chinese exporters during the investigation period³" as the Commission had "found that prices offered to [Dalian] by SOEs were higher than prices offered by private companies. From this, the Commission considers that there is insufficient evidence that this Program conferred a countervailable benefit.⁴"
8. This resulted in a reduction in the subsidy margin from that foreshadowed for Dalian in SEF 550 to an amount of 0.1%. As the subsidy received by Dalian throughout the investigation period never exceeded the negligible level of countervailable subsidy under s.269TDA(16), (i.e. 2%), on 27 August 2021, ADN 2021/111 was published announcing the termination of the countervailing investigation, insofar as it related to Dalian.
9. As Dalian no longer formed part of the countervailing investigation, the reviewable decision has no application to it. The reviewable decision is stated to only apply to "non-cooperative entities⁵" exporting the GUC from China. A subsidy margin of 42.7% was declared to apply to such exporters. This percentage is the aggregate of individual subsidy margins determined for a number of Programs nominated in Orrcon's application. Importantly, Program 20 was not one of the Programs for which an individual margin was determined and consequently no countervailable measure is in place with respect to that Program.

³ Ibid. at page 83.

⁴ Ibid. at page 84.

⁵ ADN 2021/110

Dumping investigation as context

10. As noted above, Orrcon's application, and the Commission's investigation, focused on claims of both dumping and subsidisation. Although the reviewable decision relates to the subsidy determination, aspects of the Commission's approach to the dumping investigation provide relevant context to Orrcon's ground of review.
11. In the context of the dumping investigation, the Commission found:
 - steel coil is the major raw material input used in the production of the GUC, either as HRC, or cold rolled coil (CRC) or as pre-galvanised coil;
 - coil costs represented a significant and consistent portion (approximately 88%) of the production costs of the GUC;
 - CRC and pre-galvanised coil costs closely relate to the costs of HRC, with any influence on the HRC market affecting them to the same extent⁶.
12. REP 550 noted that s. 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the World Trade Organization (WTO) Anti-Dumping Agreement (ADA). The section relevantly provides:

*“when there are no sales of like product in the ordinary course of trade in the domestic market of the exporting country or when, because of **the particular market situation** ... in the domestic market of the exporting country ... the margin of dumping shall be determined by comparison with the comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount of administrative, selling and general costs and for profits.”*
13. REP 550 stated that where a particular market situation is found, sales in that market are also not suitable for determining a price under section 269TAC(1). In such circumstances, normal values may instead be constructed under section 269TAC(2)(c). The report went on to state,

⁶ REP 550 at page 43.

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“when considering whether sales are not suitable for use in determining normal value under section 269TAC(1), because of the situation in the market of the country of export, the Commission may have regard to such factors as:

- whether the prices are low;*
- whether other conditions in the market render sales in that market not suitable for use in determining prices under section 269TAC(1).*

Government influence on prices or input costs could be one cause of artificially low prices ...

When assessing whether a market situation exists due to government influence, the Commission assesses whether government involvement in the domestic market has materially distorted market conditions. If a government involvement has materially distorted market conditions, then domestic prices may be artificially low or not substantially the same as they would be in a market free of material distortion.

Prices for the like goods may also be artificially low or not substantially the same as they would otherwise be due to government influence on the cost of inputs.

The Commission assesses the effect of any such influence on market conditions and the extent to which domestic prices no longer prevail in a normal competitive market⁷.

14. The report went on to conclude that “a particular market situation existed in respect of the domestic market for precision pipe and tube steel in China for the investigation,⁸” noting that evidence in support of this conclusion could be found in **Non-Confidential Appendix A** (Appendix A) to REP 550.

15. The section headed “Overview” within Appendix A summarises the Commission’s assessment of the Chinese domestic market for the GUC and states;

“the role of government at all levels in the Chinese economy ... has created a hybrid system in China where decisions of the market are heavily influenced by government, as opposed to conditions of competition. Simply put, Chinese firms selling and purchasing in China’s steel markets set prices and make purchasing decisions that are influenced by the directives and policies of the GOC⁹.”

⁷ REP 550 at pages 42-43.

⁸ Ibid. at page 45.

⁹ Ibid. at page 131.

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16. The Commission appears to accept that a feature of the “hybrid system” is the coexistence of, and competition between, SOEs and “private firm competition”. Other references within REP 550 generally, and Appendix A in particular, suggest that the extent of government influence is such that it impacts all prices within the steel sector generally, and the prices of the GUC in particular, regardless of whether such prices are offered by SOEs or private firms. The following statements support this conclusion:

- “Chinese manufacturers have access to cheaper raw materials. The Commission considers that the Chinese domestic market conditions lead to lower prices for steel coil due to the distortions in the Chinese market¹⁰”;
- “Chinese producers of the goods operate under market conditions, which differ from those of exporters in other countries ... Specifically, the market situation in China reduces costs across all production of the goods and like goods, due to lower raw material costs¹¹”;
- “the particular market situation nonetheless modifies the conditions of competition in a consistent manner for these market participants. Any competition within the domestic market for the goods is limited between domestic market participants in a market that the particular market situation has distorted.¹²”
- “the lower raw material costs flowing from the presence of a particular market situation directly affects precision pipe and tube steel prices, such that there are lower prices than there otherwise would have been¹³”;
- Consequently, “there would appear to be a competitive disadvantage in respect of the importation of the goods into China. A large number of Chinese producers who have access to raw material inputs at a cost below that of comparable international benchmarks supply the Chinese market¹⁴”;
- “the particular market situation modifies the condition of competition in a consistent manner **for all market participants**¹⁵ [emphasis added];
- “the effect of the particular market situation in China is a decrease in input costs **across all production** that results in a lower level of competitive pricing throughout the market in China¹⁶ [emphasis added];

¹⁰ Ibid. at page 53.

¹¹ Ibid. at page 54.

¹² Ibid. at page 57.

¹³ Ibid.

¹⁴ Ibid. at page 53.

¹⁵ Ibid.

¹⁶ Ibid. at page 57.

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- “the support provided to [SOEs] by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting supply and pricing conditions within the domestic Chinese market¹⁷”;
- “the Commission considers the GOC’s involvement and influence over the steel industry to be a cause of the prevailing structural imbalances within both the broader steel industry and the HRC and precision pipe and tube steel markets”¹⁸;
- “in short, the Chinese steel market is constructed such that preferential treatments, whether focused at SOEs or not, creates a situation of ‘competition for factors of production...’ rather than market-driven competition based on price, service and value¹⁹”; and
- “these features have the effect of limiting foreign competition and that the price of HRC (and therefore precision pipe and tube) would be substantially different in a market not characterised by GOC influence²⁰,” and
- “the GOC manages and array of subsidy Programs, soft lending and credit facilities, preferential loans, land grants and compassion at the controls to drive domestic output and consumption of steel.²¹”

17. As part of its consideration as to whether reliance could be placed upon Chinese domestic prices of the GUC in its dumping determination, the Commission then examined Chinese conditions of competition within the HRC market and accepted that “there is a large volume of participants who engage in commercial negotiations in the sale and purchase of HRC, which is indicative of competition, albeit impacted by government distortions.²²”

18. The Commission then compared monthly CRC and pre-galvanised coil prices paid by Dalian with the monthly CRC and pre-galvanised coil MEPS prices for China, Korea and Taiwan. The Commission found that Chinese prices (both of Dalian and according to MEPS data) were lower at all times than the Korean and Taiwan MEPS prices. Accordingly, the Commission concluded that “the Chinese domestic market

¹⁷ Ibid. at page 137.

¹⁸ Ibid. at page 141.

¹⁹ Ibid. at page 142.

²⁰ Ibid.

²¹ Ibid. at page 131.

²² Ibid. at page 51.

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conditions lead to lower prices of steel coil due to the distortions in the Chinese market, as discussed in [Appendix A]."²³

19. As the Commission was unable to accept Chinese domestic prices/costs in the determination of a normal value, to be compared to an export price for the GUC, the Commission replaced the raw material costs of Chinese exporters “on the basis they were not competitive market costs²⁴” and substituted an external benchmark (MEPS Korean and Taiwan steel coil prices).

Subsidy investigation and determination

20. As noted above, the Commission had found that the Chinese domestic market for the GUC was a “hybrid system” comprised of a large number of participants comprising both SOEs and “private firms”.
21. REP 550 also noted that in SEF 550 “the Commission determined ... that Chinese manufacturers of the goods received a subsidy under [Program 20] and that this Program is specific, as it is only available to purchases of HRC and other coil types derived from HRC.”²⁵ The Review Panel notes that the Commission has in previous investigations and reviews determined that Program 20 was both specific and conferred a benefit such that it constituted a countervailable subsidy.
22. A submission by the Commission to the Review Panel dated 10 December 2021 (Commission’s submission) made the following acknowledgements:
 - “the Commission has identified Program 20 as a subsidy in previous investigations of other products manufactured in China from HRC”;
 - “Program 20 is a form of subsidy referred to by the Commission as an ‘LTAR’ subsidy. It is a form of subsidy where a public body provides goods or services at a price that is less than adequate remuneration (LTAR)”;
 - “the Commission considers Program 20 as a collective term to describe conditions within the Chinese HRC market under which Chinese state-owned enterprises provide HRC at a price lower than a market benchmark.”

My analysis has proceeded on the basis of these acknowledgements.

²³ Ibid. at page 53

²⁴ Ibid. at page 59.

²⁵ Ibid. at page 83.

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23. As the Commission found that the CRC used by Dalian to manufacture the GUC during the investigation period were purchased from a “private” company no benefit had been received under Program 20 and as such was not countervailable.

Reasons for reinvestigation

24. Section 269T relevantly defines a subsidy as meaning a financial contribution by a government **or public body** which confers a benefit.
25. Section 269TACC then outlines how to determine whether a financial contribution confers a benefit. This determination is to be made “having regard to all relevant information” but is subject to the consideration of a number of factors or guidelines which include whether the provision or sale of goods and services was made for less than adequate remuneration. Section 269TACC(4) then goes on to require that the adequacy of remuneration is to be determined having regard to prevailing market conditions for like goods in the country where those goods are purchased. The Commission’s Dumping and Subsidy Manual (Manual) notes that “WTO case law has required that benefit be determined in relation to the recipient of that benefit²⁶.”
26. The Manual also acknowledges that financial contributions by a government to the production of inputs used in manufacturing goods, the subject of an investigation, are not excluded from the amount of subsidies that may be offset through the imposition of a countervailing duties. The Manual notes,

“Upstream’ subsidy refers to a subsidy ... paid to an input product such as raw material ... used in the production of the goods in question, and countervailing action may be taken where the benefit received by the upstream recipient of the subsidy passed through, in whole or in part, to the downstream purchaser.

Where it is established that the price of the input product reflects the benefit of the subsidy, in whole or in part, received by the upstream supplier, then the downstream purchaser is taken to have received a subsidy²⁷.”

²⁶ Anti-Dumping Commission Dumping and Subsidy Manual, November 2018 at page 86.

²⁷ Ibid. at page 114.

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27. Section 269T(2AA) gives effect to this policy with respect to upstream subsidies as it relevantly provides that a financial contribution may confer a benefit in relation to goods exported to Australia if that contribution is made in relation to goods or services used in relation to the production or manufacture of the goods exported to Australia.
28. In the context of the dumping investigation now before the Review Panel, the Commission found that steel coil is the major raw material input used in the production of the GUC, either as HRC or as cold rolled coil (CRC) or as a pre-galvanised coil, and as such, coil costs represented a significant and consistent portion of the CTM of the goods (88%).²⁸
29. The Commission has applied s.269T(2AA) in the context of previous subsidy investigations. Orrcon, in its application to the Review Panel, attached an extract from REP 177 *Certain Hollow Structural Sections exported from the People's Republic of China*. That report considered the effect of Program 20 on the price of HRC paid by HSS manufacturers/exporters during the investigation period to determine whether such prices reflected reasonable market costs and an adequate remuneration. The report concluded that the effect of Program 20 was such that it had distorted all prices of HRC whether manufactured/supplied by state invested enterprises (SIEs) or private enterprises in China²⁹. Orrcon's application also referred to REP 379 which came to a similar conclusion with respect to Program 20.
30. The Commission's assessment of the impact of Program 20 can be found in Appendix B to REP 550 under the heading "*Program 20-Hot rolled steel provided by government at less than fair market value*³⁰". The report notes "that mixed ownership reform is an ongoing feature of the Chinese steel industry³¹" but that whenever the GOC has a shareholding in a steel mill it has a direct influence over the mills operations. I assume that such influence would extend to the pricing of its products. The Commission concluded "that Chinese steel mills, whether wholly or partially owned by the GOC, possesses, exercises and are vested with governmental authority and are, therefore, public bodies."³²

²⁸ REP 550 at page 43.

²⁹ REP 177 at page 254.

³⁰ REP 550 at page 148.

³¹ Ibid.

³² Ibid.

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31. REP 550 reflects reasoning different to that adopted by the Commission in the earlier reports referred to in Orrcon's application. In those reports the Commission had accepted that the effect of Program 20 impacted on the upstream producers of HRC by conferring a benefit upon those producers which enabled them to sell HRC at prices lower than would have been the case absent Program 20. This benefit was therefore treated as flowing through, in whole or in part, to the downstream producers of the goods exported to Australia.
32. The difference in the two approaches is that in the earlier reports the Commission had accepted that it was the GOC through the application of Program 20 which provided the financial contribution. This contribution was the product of GOC's policies regulating the production of steel as well as the provision of goods and services to the HRC producers. In REP 550 by classifying steel mills, whether wholly or partly owned by the GOC, as public bodies, the Commission treated those mills as the source of the financial contribution and that any benefit would be conferred directly upon their customers whenever their prices were less than those offered by "private" mills.
33. The Commission then went on to consider whether such mills, as "public bodies" conferred a benefit upon the producers of the GUC. It did so by comparing the selling prices of HRC supplied by such mills with the prices offered by "private" mills. REP 550 acknowledged that Dalian produced a range of products for which it sourced raw material inputs from both "private" and "public body" steel mills. In relation to the production of the GUC the Commission found that Dalian had exclusively purchased HRC from "private" mills. As the prices for HRC from the mills considered to be public bodies were higher than the prices of HRC offered and supplied to Dalian by "private" mills, the Commission concluded no benefit had been conferred.
34. In adopting the above reasoning, the Commission answered a question that was not before it i.e. whether the selling prices of public body mills could confer a countervailable subsidy. The question which was before the Commission was whether Program 20, in conjunction with s. 269T(2AA), conferred a financial contribution on all producers of HRC, whether private or public, which flowed through, in whole or in part, such as to constitute a benefit to, in this case, Dalian.
35. I therefore request that the Commission's reinvestigation address this issue.

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36. As the Commission had found that Dalian had only sourced HRC from “private” mills at prices below those offered by public body mills, the Commission’s reinvestigation will also need to address whether the “private” mill prices were for less than adequate remuneration having regard to prevailing market conditions for like goods. Stated differently, the Commission will need to be satisfied that Dalian would not need to pay more to its “private” mill suppliers of HRC if there had been no financial contribution from the GOC through the operation of Program 20.
37. It would appear that the Commission looked to and viewed as determinative the prices of HRC from “private” mills notwithstanding conclusions it had reached in its assessment of the particular market situation for that product (refer to paragraphs 16 and 19 above).
38. I note that neither the Act nor the relevant WTO agreements provide express guidance as to how the adequacy of remuneration is to be assessed having regard to prevailing market conditions. However, a number of WTO Appellate Body reports have dealt with these issues. The Appellate Body in *US - Carbon Steel (India)* stated that a determination of whether remuneration is “less than adequate” involves the selection of a comparator, or a benchmark price, to be compared with the government price for the good in question and “necessarily involves an analysis of the market generally³³”. Such a broad market analysis is not limited to circumstances in which government intervention directly determines prices and may encompass other forms of intervention which are found to have a distorted impact upon prices such that they no longer represent a proper benchmark for adequate remuneration.
39. In the present case the Commission equated the government price with the “public body” mill price. It appears to have accepted as the appropriate benchmark or comparator the “private” mill price. REP 550 provides no guidance as to the characteristics of a “private” mill nor the evidence establishing that such criterion were met. The Commission appears to have differentiated between “private” and public body mills based upon the presence of a government ownership or shareholding. That is, companies which did not have any government shareholding appear to have been classified or accepted as “private” mills. This differentiation did not have regard to the market conditions in which such companies were operating

³³ Appellate Body Report, *US – Carbon Steel (India)* DS 436/AB/R, 8 December 2014 at para. 4.309.

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and did not address whether they were better off as a consequence of Program 20. The Commission therefore does not seem to have tested the suitability of the “private” mill prices as a comparator.

40. The Appellate Body in *US - Carbon Steel (India)* emphasised,

“whether a price may be relied upon for benchmarking purposes ... is not a function of its source but, rather, whether it is a market determined price reflective of prevailing market conditions in the country of provision. Accordingly, while the prices at which the same or similar goods are sold by private suppliers in the country of provision may serve as a starting point of analysis, this does not mean that, having found such prices, the analysis must necessarily end there.”³⁴

41. In a later report, the Appellate Body noted that central to any determination with respect to adequate remuneration;

“is the question of whether in country prices are distorted as a result of government intervention ... recourse to out of country prices may be warranted where the investigating authority finds evidence resulting from government intervention.”³⁵

42. As noted above, the Commission appears to have accepted the prices of “private” mill suppliers of HRC as determinative, and did not conduct a broader analysis of factors such as the impact of Program 20 upon all prices for HRC within the market. That it did so, “notwithstanding that the Commission has found that there is a market situation in respect of HRC within the domestic Chinese market”, suggests that the Commission considered those findings to be of little relevance to the determination of adequate remuneration. However, the findings upon which the particular market situation determination was based encompassed a multitude of issues which the Commission accepted as impacting upon the operation of the steel industry in general and in particular upon the market for HRC (refer to paragraphs 16 and 19 above). Such findings, in my view are of direct relevance to an assessment of the prevailing market conditions in which “private” mills offered their

³⁴ Ibid. at para. 4.151.

³⁵ Appellate Body Report, *US – Countervailing Measures (China)* (Article 21.5 – China) DS 437/AB/R, 18 December 2014 at para. 5.147.

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HRC for sale. The Commission will need to explain why its findings with respect to the presence of a particular market situation are not illustrative of government intervention through the application of Program 20 such as to preclude “private” mill prices as reflecting prevailing market conditions.

43. I acknowledge the Act adopts different phrases such as “particular market situation” in the context of the determination of normal value and the phrase “prevailing market conditions” when determining the existence of a countervailable subsidy. In interpreting such phrases, it is usual to give effect to such differences having regard to their respective context. As noted above, the phrase “prevailing market conditions” has not been defined by the Act. That said, I do not discern anything within that phrase which suggests that it excludes from consideration a factor impacting upon a market which may also be relevant to the determination of a particular market situation in the context of consideration of normal value.

Non-cooperative entities

44. As noted in paragraph 9 above, Program 20 was excluded from the countervailable measures to apply to exports of the GUC from ‘non-cooperative entities’.
45. At a conference with Commission representatives, convened on 15 November 2021, I enquired why this was the case given that in previous investigations and reviews the Commission had imposed countervailing duties with respect to Program 20. The Commission representatives “explained that decisions relating to ‘non-cooperative entities’ of necessity could only have reliance upon the best information available, which in this case was that provided by [Dalian]”.
46. I note that Dalian produces a range of steel products and purchases inputs to those products from both “private” and public body steel mills. However, in relation to the production of the GUC, it had exclusively purchased HRC from “private” mill suppliers. It was on this basis, which could be viewed as an exception, that the Commission decided that Program 20 would not be relevant to any subsequent exports of the GUC from any ‘non-cooperative entities’. Such an outcome seems anomalous given that the Commission, through its earlier enquiries, has accepted both the prevalence and influence of Program 20 upon the price of steel exports from China. Given the object of the legislation is to provide Australian industry with a response to subsidised exports it would seem imprudent to accept an exception

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as the norm. If non-cooperative entities were subject to a countervailing measure which included Program 20 as a component and if an exporter wished to challenge its application to its particular circumstances it could do so by a specific mechanism provided for by the legislation and request a review.

47. In light of the above, I request that the Commission's reinvestigation address the application of Program 20 to 'non-cooperative entities'.

Please could you report the result of the reinvestigation within 60 days, that is, by **21 February 2022**.

If you require more time, including time to allow interested parties the opportunity to comment on an aspect of the reinvestigation, please contact the Secretariat.

Yours Sincerely,



Paul O'Connor
Panel Member
Anti-Dumping Review Panel
22 December 2021